

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED STATES OF AMERICA ex rel.
CECIL G. JORGENSEN and ALLEN K.
GREGORY,

Plaintiffs,

v.

ALAN RITCHEY, INC., RESOURCE
CONSULTANTS, INC., DYNCORP, DDD
COMPANY, GFI GENFARE, and NEW
BREED CORPORATION, a.k.a. NEW
BREED LEASING CORPORATION,

Defendants.

No. C01-588Z

ORDER

BACKGROUND

This matter comes before the Court on Defendant Alan Ritchey, Inc.'s ("ARI") Motion to Dismiss, docket no. 85. The Court has previously allowed Plaintiff-relators Cecil Jorgenson and Allen Gregory to amend their Complaint in response to various other motions to dismiss. Accordingly, the Court now considers Plaintiffs Fourth Amended Complaint, docket no. 84. The Court previously ruled that no further amendment of the Complaint would be permitted. See Minute Order, docket no. 83.

1 Plaintiffs filed this *qui tam* lawsuit on April 20, 2001. See Compl., docket no. 1. The
2 original Complaint set forth various “Lot Numbers” and “Repair Order Numbers” for
3 containers and rolling stock that were “not worked on at all, yet the repair orders are signed
4 off as completed, and the Postal Service is billed for work that is thus not done.” See
5 Compl., docket no. 1, ¶¶ 4, 5. Plaintiffs have amended their Complaint several times, and
6 with each amendment have added detail regarding their allegations of fraudulent activities
7 and false claims. The Fourth Amended Complaint alleges that ARI, including Plant Manager
8 Mark Pyne, conspired to bill the Postal Service for services that were not performed, in
9 violation of the False Claims Act, 31 U.S.C. § 3729. See Fourth Am. Compl., docket no. 84,
10 ¶ 3.24.

11 Plaintiffs allege that ARI fraudulently boosted profits at the expense of the United
12 States Postal Service. The Fourth Amended Complaint alleges the following fraudulent
13 activities with regard to containers and rolling stock:

- 14 ■ Containers were not worked on at all, yet the repair orders were falsely signed
15 off as completed. Id. ¶ 3.18.
- 16 ■ Containers did not need repair but were falsely marked for repair. Id. ¶ 3.19.
- 17 ■ Containers were deliberately damaged, and then repaired. Id. ¶ 3.20.
- 18 ■ Containers had superficial welds placed over nonexistent cracks. Id. ¶ 3.21.
- 19 ■ Containers were “rigged” to fail initial inspections so they would be sent in for
20 repair. Id. ¶ 3.22.
- 21 ■ Improper reporting of work done to Postal Service standards. Id. ¶ 3.23.
- 22 ■ Employees were pressured to maintain unreasonable work rates, and to sign off
23 on improperly completed welds and welds not actually done. Id. ¶ 3.24.
- 24 ■ Casters on carts were falsely reported as having been replaced with “new”
25 parts. Id. ¶ 3.25.
- 26 ■ Inspectors were pressured to falsely sign off on “completed” work. Id. ¶ 3.26.
- “Management agents” pressured department managers to increase the welders’
throughput, and to keep them working even when no repairs were needed. Id.
¶ 3.27.

1 In addition, Plaintiffs provide a list of lot numbers and repair order numbers which are
2 “some” of the container repairs alleged top have been improperly performed by ARI. Id. ¶
3 3.40. Plaintiffs do not provide details regarding the actual submission of false claims to the
4 Postal Service, but have alleged that ARI’s information management system “OSIS,” or “On
5 Site Information System,” was used to track order fulfillment and billing to the Postal
6 Service. See id. ¶ 3.34. Plaintiffs have alleged that they witnessed falsely documented
7 repair work, which was used to submit false claims to the United States.

8 The United States investigated the allegations of false claims and settled with
9 Defendant Dyncorp, who was dismissed from this lawsuit on June 12, 2006. See Order of
10 Dismissal, docket no. 61. The United States declined to intervene as to the remaining
11 Defendants, and Plaintiffs continue the case without the Government’s participation.
12 Plaintiffs’ Fourth Amended Complaint was filed on September 17, 2006. Defendant ARI
13 now moves to dismiss the Fourth Amended Complaint, based on the Plaintiffs’ failure “to
14 specifically allege a single false claim.”

15 **DISCUSSION**

16 The False Claims Act imposes liability on any person who attempts to defraud the
17 federal government of property or money. 31 U.S.C. § 3729 (“§ 3729”). Federal Rule of
18 Civil Procedure 9(b) states that “[i]n all averments of fraud or mistake, the circumstances
19 constituting fraud or mistake shall be stated with particularity.” Fed. R. Civ. P. 9(b). “To
20 comply with Rule 9(b), allegations of fraud must be ‘specific enough to give defendants
21 notice of the particular misconduct which is alleged to constitute the fraud charged so that
22 they can defend against the charge and not just deny that they have done anything wrong.’”
23 Bly-Magee v. California, 236 F.3d 1014, 1019 (9th Cir. 2001) (quoting Neubronner v.
24 Milken, 6 F.3d 666, 672 (9th Cir. 1993)). These heightened pleading requirements may be
25 relaxed under certain limited circumstances, including when the information is within the
26 opposing party’s knowledge. Neubronner, 6 F.3d at 672. ARI alleges that Plaintiffs fail to

1 satisfy the pleading requirements of Rules 9(b) and 12(b)(6), and ask the Court to dismiss all
2 of Plaintiffs' claims with prejudice.

3 **A. Claims under § 3729(a)(1) and (a)(2) relating to the Auburn, Washington plant.**

4 Section 3729(a)(1) prohibits the presentation of a false claim for payment to the
5 United States, while § 3729(a)(2) prohibits the creation and submission of a false record or
6 statement, when the submission is done in an attempt to get a false claim paid by the United
7 States. United States v. Southland Management Corp., 326 F.3d 669, 675 (5th Cir. 2003).
8 Under § 3729(a)(1), the Plaintiffs must plead the presentation of a false claim for payment,
9 while under § 3729(a)(2) a Plaintiffs must plead both a false "record or statement" and the
10 payment or approval of a false claim; there is no liability for a false statement unless it is
11 used to get false claim paid. Southland Management Corp., 326 F.3d at 675.

12 Plaintiff's Fourth Amended Complaint alleges a litany of improper actions related to
13 rolling stock repairs at ARI's Auburn, Washington plant. See, e.g., Fourth Am. Compl.,
14 docket no. 84, ¶¶ 3.18-3.27. The Defendant contends, however, that the Complaint does not
15 actually allege the payment of a false claim. Plaintiffs concede they were not responsible for
16 billing. See Response, docket no. 86, at 14. However, they urge the Court to find that their
17 preparation of false records of repair gives rise to a reasonable inference that false claims
18 were submitted. In addition, Plaintiffs recent amendment added claims under § 3729(a)(2)
19 for preparation of a "false record or statement" used to get a false or fraudulent claim paid by
20 the United States. See Fourth Am. Compl., docket no. 84, at 4.7.

21 In C00-2191Z, the Court recently discussed the substance of the allegations in this
22 case, noting they contained sufficient detail regarding the fraud to withstand ARI's Motion to
23 Dismiss. See Harris v. Alan Ritchey, Inc., No. 00-2191, Order, docket no. 90. As the Court
24 noted in Harris, Plaintiffs Jorgenson and Gregory have provided sufficient detail to meet the
25 requirements of Rule 9(b). Plaintiffs' allege direct personal knowledge of repair orders that
26 were falsely signed off, equipment that was improperly marked for repair, and various other

1 improper actions related to work performed for the Postal Service. Taken together, the
2 Fourth Amended Complaint states a claim under § 3729(a)(1) and (a)(2). Plaintiffs allege
3 the preparation of false records and repair orders to substantiate allegedly false and
4 fraudulent claims. See, e.g., Fourth Am. Compl., docket no. 84, ¶¶ 3.18. In addition,
5 Plaintiffs allege that the OSIS system was used to catalog improperly performed repairs.
6 Accordingly, Defendant's Motion to Dismiss Plaintiffs' Claims under § 3729(a)(1) and
7 (a)(2) is DENIED.

8 **B. Claims related to ARI Plants Other than Auburn, Washington.**

9 Certain allegations in Plaintiffs' Fourth Amended Complaint are identical to
10 allegations in the Complaint of Edward Harris in Harris v. Alan Ritchey, Inc., No. 00-2191.
11 This includes the allegation, dismissed by the Court in Harris, that fraudulent claims were
12 initiated in locations other than Auburn, Washington.

13 [f]alse claims were also initiated at ARI's other MTESS facilities. They
14 include Long Island, New York, Springfield, Massachusetts, Minneapolis,
Minnesota, Philadelphia, Pennsylvania, and San Francisco, California.

15 Fourth Am. Compl., docket no. 84, ¶ 3.54. As the Court noted in Harris, alleged fraudulent
16 activity at one plant does not constitute an allegation for a different plant. Because Plaintiffs
17 fail to allege any specific information relating to fraud at other plants, Plaintiffs' claims
18 relating to ARI plants other than Auburn, Washington, are DISMISSED.

19 **C. Claims under § 3729(a)(3).**

20 Section 3729(a)(3) makes unlawful a "conspiracy" to defraud the United States
21 Government by getting a false or fraudulent claim paid by the United States. The Gregory
22 Declaration, docket no. 37, purports to set forth the facts of a conspiracy which are
23 incorporated by reference into the Fourth Amended Complaint. See Fourth Am. Compl.,
24 docket no. 84, at ¶ 3.65. Mr. Gregory alleges personal knowledge of improper training
25 procedures designed to increase the submission of false claims to the Postal Service,
26 including increasing the number of containers directed to repair, "rigging" of containers for

1 repair, and improperly setting containers for inspection failure. See Gregory Declaration,
2 docket no. 37, at ¶¶ 5-8. Absent, however, are facts relating to an agreement or conspiracy
3 between New Breed, ARI, or any other third party. The facts alleged even suggest
4 otherwise, indicating a later discovery by ARI of “bad practices” brought back from New
5 Breed:

6 [o]nce these practices were discovered by plant management, I was instructed
7 to use them regularly to keep the profits up in container repair which in the
8 first year or more helped offset the losses being realized by the other
9 departments.

Gregory Declaration, docket no. 37, ¶ 8.

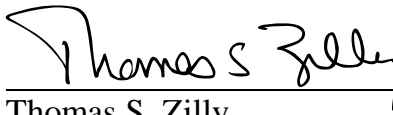
10 A fraudulent conspiracy pleading must comport with Rule 9(b). See, e.g., Vess v.
11 Ciba-Geigy Corp. U.S.A., 317 F.3d 1097, 1108 (9th Cir. 2003). To substantiate a claim for
12 fraudulent conspiracy under § 3729(a)(3), Plaintiffs must plead the facts and circumstances
13 relating to the conspiracy. Plaintiffs have failed to satisfy the heightened pleading
14 requirements of Rule 9(b) and have failed to plead facts regarding a conspiracy pursuant to
15 § 3729(a)(3). Accordingly, Plaintiff’s claims pursuant to § 3729(a)(3) are DISMISSED.

16 CONCLUSION

17 For the reasons stated in this Order, the Court GRANTS IN PART and DENIES IN
18 PART Defendant ARI’s Motion to Dismiss, docket no. 85. The Court DENIES the
19 Defendant’s Motion to Dismiss as it relates to Plaintiffs’ claims under § 3729(a)(1) and
20 (a)(2). The Court DISMISSES WITH PREJUDICE Plaintiffs’ claims under § 3729(a)(3) and
21 Plaintiffs’ claims relating to ARI plants in other locations.

22 IT IS SO ORDERED.

23 DATED this 27th day of April, 2007.

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25 
26 Thomas S. Zilly
United States District Judge

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